judicial generalizations as to what as a matter of fact is due care in each class of cases. According to this view, there would be no difficulty in holding a negligent defendant, as in the principal case, even though he could not be brought clearly within one of the established classes. The only peculiarity would be that the jury would have to determine the standard of due care, instead of having it settled for them as a matter of law. A few courts seem to assume the point of view contended for, though without a clear expression of it. Some cases, for instance, appear to make an owner's liability to business visitors depend on whether he had notice of their whereabouts at the time. *Broslin* v. *Kansas, etc., R. R. Co.*, 114 Ala. 398. Similarly the owner may be liable to a trespasser where trespassers are common and to be expected. *South & North Ala. Ry. Co.* v. *Donovan*, 84 Ala. 141. The circumstances relied upon would seem immaterial, except as they help to determine the standard of care.

AVOIDING STATUTE OF LIMITATIONS BY ACKNOWLEDGMENT OF DEBT. — The apparent injustice of extinguishing a valid debt by a strict application of the statute of limitations led the courts at a comparatively early date to modify the effect of the statute by holding that any new promise to pay a debt thus barred revived the liability. The existing moral obligation was held a sufficient consideration to support the new promise. See *Philips* v. *Philips*, 3 Hare 281, 299. Subsequently, the mere acknowledgment of the existence of the debt was regarded as raising an implied promise to pay it. See *Sigourney* v. *Drury*, 31 Mass. 387. At first the theory by which the acknowledgment was regarded as reviving the debtor's liability was apparently that the statute merely raised a presumption of payment which might be rebutted. *Newlin* v. *Duncan*, 1 Harr. (Del.) 204. This, however, was too palpable a fiction. The logical result of it would be that the statutory bar might always be removed by proof that the debt had not, in fact, been paid. This would have rendered the statute entirely nugatory; consequently the whole theory has been generally discarded. A second theory suggested is that the acknowledgment is in effect merely a waiver of the statutory defense. To this explanation, however, there are several objections. In the first place, it is generally, though not universally, held that the new promise must be made before action brought, and not during the suit. *Bradford* v. *Spyker's Adm'r*, 32 Ala. 134. Again, if the new promise be conditional in form, it need be fulfilled only according to its terms. *Tanner* v. *Smart*, 6 B. & C. 603. Furthermore, the statute immediately begins to run on the new promise as though it were an independent cause of action. *Munson* v. *Rice*, 18 Vt. 53. In the face of these objections it would seem that the theory of waiver is untenable. The new promise is now considered as one of the essential elements on which the suit is founded. *Krebs* v. *Olmstead*, 137 Mass. 504.

Just what has been required by the courts in order to avoid the effect of the statute has varied from time to time. At one period the courts, influenced by the theory that the statute merely raised a presumption of payment, allowed almost any admission of the debt to take the case out of the statute. *Peters* v. *Brown*, 4 Esp. 46; *Bryan* v. *Horseman*, 4 East 599. The modern cases, recognizing that the action is in reality grounded upon the new promise, have required something nearer a promise in fact. To-day an acknowledgment of indebtedness must be clear and distinct. *Bell* v.

Morrison, 1 Pet. (U. S. Sup. Ct.) 351. It must be made directly to the creditor. *Wachter* v. *Albee*, 80 Ill. 47. It must not be coupled with words or circumstances indicating an intention not to pay the debt. *Bell* v. *Morrison*, *supra*. Indeed, some cases show a tendency to require positive indications of intention to pay. This is well illustrated by two recent decisions. *Wood* v. *Merrietta*, 71 Pac. Rep. 579 (Kan.) and *Lambert* v. *Doyle*, 43 S. E. Rep. 416 (Ga.). In both cases unqualified acknowledgments of indebtedness unaccompanied by any statements of an intention to pay were held insufficient.

On principle there seems to be no reason why the result of the statute of limitations as applied to debts should differ from that where it is applied to land. Though the statute in terms bars only the remedy, in land cases it is well settled that when the statutory period has run, a good title is conferred on the adverse possessor and the true owner's right is gone. *Inhabitants, etc., in Winthrop* v. *Benson*, 31 Me. 381. Such a theory is in its nature as applicable to debts as to land. Practically it might seem as harsh that a true owner should lose his land, as that a creditor should lose his debt. Yet the results in the cases of real estate have been generally recognized as desirable. It is to be regretted that the law as to debts is settled on opposing lines. In any event the recent cases noted above show a fortunate tendency to limit that doctrine.

THE WABASH STRIKE INJUNCTION. — Whatever the law may have been a few years ago, it is unquestioned to-day that equity has the power to restrain the continuation of violent strikes. The Wabash Railroad injunction, restraining a peaceable strike, however, seems to have been an attempt by the court to impose upon railroad employees restrictions which more properly should have emanated from the legislature. Though the injunction was subsequently dissolved, the questions raised in the preliminary hearing are of such vital importance as to be worthy of comment. Wholly because the employees were employed by a public service company, certain labor leaders were restrained from bringing about a strike. *Wabash R. R. Co.* v. *Hannahan*, 56 Cent. L. J. 201 (decided Mar. 3, 1903, by Dist. Ct., E. D. Mo.).

Such a decision draws a positive distinction between the right of an ordinary laborer and that of a railroad employee to enter upon a peaceful strike. This is hardly justifiable in the present state of the law. It has been universally conceded that every workingman has a right to strike peaceably either alone, or in combination with others, no matter what injury is done thereby to private individuals. Is this right to be lessened when the public at large is injured? Beneath the surface of this question lies a sharp conflict between the individual's right of personal liberty in action and the community's right to continuous adequate service. Despite the undoubted importance of the latter, it must surely be more in consonance with the genius of our institutions that the former should prevail. Though there are several cases which assert that one who offers his services to a railroad impliedly gives up his right to quit when he pleases, it must be remembered that this language was not necessary for the decisions, and was used during the riots of 1894 when less emphatic words would have spelled anarchy. See *Toledo, etc., Ry. Co.* v. *Penn. Co.*, 54 Fed. Rep. 746; *United States* v. *Elliot*, 62 Fed. Rep. 801.